

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH  
CAROLINA WESTERN DIVISION  
No. 5:22-CV-00015-FL**

ROBERT TERRACINO and  
BRADIE TERRACINO,

Plaintiffs,

v.

TRIMACO, INC.,

Defendant.

**PLAINTIFFS' OPPOSITION TO  
TRIMACO'S RESPONSE REGARDING  
MARKMAN HEARING (DKT. [65](#)) AND  
MOTION TO STRIKE**

COME NOW Plaintiffs Robert and Bradie Terracino (the "Terracinos" or "Plaintiffs") and pursuant to Fed. R. Civ. P. 12(f) and the Court's rulings from the bench on February 1, 2024, hereby submit this Opposition and Motion to Strike Defendant Trimaco, Inc's ("Trimaco's" or "Defendant's") Response Regarding Markman Hearing (Dkt. [65](#)) concerning the construction of certain claim terms of U.S. Patent No. 9,044,917 (the "'917 Patent").

**I. BACKGROUND**

The Court heard oral argument on the proposed claim constructions for the patent at issue in this matter (the '917 Patent) on Thursday, February 1, 2024. Two of the claims at issue - Claim 1 and Claim 6 – were argued in Defendant's pleadings (Dkts. [40](#) and [45](#)) and by Defendant at oral argument to be indefinite on the basis of the claimed testing procedure and results in the claims and described in the specification of the '917 Patent. The Transcript of that hearing is in the Court's records at Dkt. [64](#).

In response to argument of counsel for Trimaco, the Court granted leave to Trimaco to file supplemental argument in regards to the testing procedures at issue before the Court. Dkt. [64](#) at 68:2-8. The Court further granted Plaintiffs leave to “have the last word.” *Id.* at 68:9-16.

Trimaco filed its Response styled “Supplemental Claim Construction Submission” on February 6, 2024. Dkt. [62](#). Plaintiffs filed their Response to Trimaco’s “Supplemental Claim Construction Submission” on February 12, 2024. Dkt. [63](#).<sup>1</sup> In direct contravention to the Court providing Plaintiffs with the “last word” on the matter, without discussing any additional pleadings with Plaintiffs, and without leave of Court, Trimaco filed a Response regarding Markman Hearing (Supplement to Claim Construction Hearing) on February 23, 2024. Dkt. [65](#).

Because Trimaco filed its February 23, 2024 Response in direct contravention to the Court’s rulings from the bench on February 1, 2024, without consultation with Plaintiffs, and without leave of Court, the Court should disregard Trimaco’s Response at Dkt. [65](#) and strike the same from the record.

## **II. CONCLUSION**

For the reasons set forth herein, Plaintiffs respectfully request that the Court decline to consider Trimaco’s Response filed on February 23, 2024 and strike the same from the record.

February 27, 2024

Respectfully submitted,

/s/ Duncan G. Byers

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<sup>1</sup> The five days provided by the Court for Plaintiff’s “last word” on the matter expired on Sunday, February 11, 2024 and Plaintiff’s filing was therefore entered on Monday, February 12, 2024.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2024 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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